

United States District Court

For the Northern District of California

10 Cryptography Research, Inc.,

NO. C 04-04143 JW

11 Plaintiff,

**ORDER FOLLOWING CASE
MANAGEMENT CONFERENCE;
NOTICE OF INTENT TO APPOINT
SPECIAL MASTER**

12 v.

13 Visa International Service Assoc., et al.,

14 Defendant.

15 _____/16 The Court conducted a Case Management Conference on January 15, 2008. Counsel for the
17 respective parties were present. In light of the discussion at the conference, the Court orders as
18 follows:19 **A. Notice of Intent to Appoint Special Master**20 The Court reiterated its desire to appoint a Special Master to assist in the management of this
21 lawsuit. The parties were agreeable. Thus, due to the parties' consent, the complexity of legal and
22 factual issues involved in this case, and the cost savings to the parties which will result from a more
23 focused management of pre-trial matters, the Court concludes that the appointment of a Special
24 Master in this lawsuit would be beneficial to all. Pursuant to FED. R. CIV. P. 53, the Court notifies
25 the parties of its intent to appoint a Special Master.

26

27

28

1 **B. Scope of the Special Master's Appointment**

2 The Special Master shall preside over all proceedings, with the power to hear and make
3 reports and recommendations on the following pretrial matters:

- 4 1. Timing of pre-answer motions or any responsive pleadings;
- 5 2. Motions to dismiss under FED. R. CIV. P. 12;
- 6 3. Timing and content of initial disclosures;
- 7 4. Case development processes (e.g., staged discovery and discovery schedules or
8 plans);
- 9 5. Disclosures and discovery;
- 10 6. Disclosure or discovery disputes;
- 11 7. Motions for preliminary injunction, writs of attachment, or modifications of existing
12 injunctions or attachment orders;
- 13 8. Limits on the number of party experts.

14 Furthermore, the Special Master shall have the authority to:

- 15 1. Conduct pretrial conferences and hearings to establish:
 - 16 (a) The substance of the claims and defenses presented in the case and of the
17 issues to be decided;
 - 18 (b) The material facts not reasonably disputable;
 - 19 (c) The disputed material factual issues;
 - 20 (d) The relief claimed, including a particularized itemization of all elements of
21 damages which may reasonably be claimed based upon the evidence which
22 would be presented at trial;
 - 23 (e) The pertinent undisputed and disputed points of law, with respect to liability
24 and relief, including proposed jury instructions;
 - 25 (f) The witnesses necessary to be called at trial, except for impeachment or
26 rebuttal, together with the substance of the testimony to be given;
 - 27 (g) A compilation of all documents and other items necessary to be offered as
28 exhibits at trial, except for impeachment or rebuttal, together with a brief
statement following each item describing its substance or purpose and the
identity of the authenticating witness;
- 29 2. Audit and establish attorney fees to be awarded, if any.

1 The Special Master shall exercise the power necessary or proper to regulate all proceedings
2 before him and shall do all acts and take all measures necessary or proper for the efficient
3 performance of his duties under this Order.

4 The Special Master shall file numbered interim reports or recommendations which: 1)
5 advise this Court of the status of the case, and 2) recommend the disposition of any matter heard by
6 him. The parties shall have ten (10) days from the date an interim report or recommendation is filed
7 to file any objections. Any party opposing the objection(s) shall file an opposition within ten (10)
8 days after the objection is filed. If no objection is filed, the Special Master's report or
9 recommendation shall become a binding Order of the Court and the parties shall comply with the
10 Order. If, however, an objection is filed, the matter shall be deemed submitted to the Court without
11 oral argument twenty (20) days after the Special Master's report or recommendation is filed--unless
12 an application is made and the Court orders the matter to be scheduled for hearing.

13 Reports or recommendations pertaining to non-dispositive motions or pretrial discovery
14 matters shall be reconsidered by this Court only where the Special Master's report or
15 recommendation is clearly erroneous or contrary to law. Reports or recommendations pertaining to
16 dispositive motions shall be reconsidered by this Court *de novo*.

17 **C. Fees and Costs of Special Master**

18 Unless the Court receives a recommendation from the Special Master for some other
19 apportionment, each party shall bear the cost of the Special Master on a per capita basis, payable in
20 advance. The Special Master shall report to the Court on a periodic basis regarding the state of his
21 fees and expenses. Unless otherwise ordered, the Special Master shall, in his report, advise the
22 Court, without specifically identifying parties, as to whether the parties are current in their payment
23 of his fees and expenses.

24 //

25

26

27

28

1 **D. Nominations of Special Master**

2 The Court nominates Tom Denver.¹ The parties shall file any objections to Mr. Denver
3 being named as Special Master on or before **January 31, 2008**. In their objections, the parties shall
4 provide alternate nominations.

5 If no objection is filed and Mr. Denver accepts his appointment, Mr. Denver shall file an
6 affidavit as required by FED. R. CIV. P. 53(b)(3). The Court's appointment of the Special Master
7 shall become effective on **February 1, 2008**. Once appointment is effective, the parties shall notice
8 all relevant discovery and pretrial motions before the Special Master and not the assigned Magistrate
9 Judge Howard Lloyd.

10
11 Dated: January 23, 2008



JAMES WARE
United States District Judge

27 ¹ Mr. Denver is with Mediation Masters and may be reached at (408) 280-7883.

United States District Court

For the Northern District of California

1 THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:

2 Alexandra V. Percy apercy@hansonbridgett.com
3 Ann S. Auiler aauiler@whitecase.com
3 Brandon D. Baum bbaum@mayerbrown.com
3 Darren E. Donnelly ddonnelly@fenwick.com
4 David Douglas Schumann dschumann@fenwick.com
5 Dennis S Corgill dcorgill@mayerbrownrowe.com
5 Ian N. Feinberg ifeinberg@mayerbrownrowe.com
6 J. David Hadden dhadden@fenwick.com
6 Jedediah Wakefield jwakefield@fenwick.com
7 Joshua M. Masur jmasur@mayerbrownrowe.com
7 Laurie Michelle Charrington lcharrington@gmail.com
8 Lynn H. Pasahow lpasahow@fenwick.com
8 Marshall C. Wallace mwallace@reedsmith.com
9 Martin F. Majestic Mmajestic@hansonbridgett.com
9 Mary Elaine Johnston mejohnston@whitecase.com
10 Michael A. Duncheon mduncheon@hansonbridgett.com
10 Michael A. Molano mmolano@mayerbrownrowe.com
10 Michael J. Gallagher mgallagher@whitecase.com
11 Roderick M. Thompson rthompson@fbm.com
11 Ryan Aftel Tyz rtyz@fenwick.com
12 Sangeetha M. Raghunathan sraghunathan@fbm.com
12 Stephen Roger Dartt sdartt@fenwick.com
13 William Healey whealey@mayerbrownrowe.com
13 William Paul Schuck wps@mjllp.com

15 Dated: January 23, 2008

Richard W. Wieking, Clerk

16 By: /s/ JW Chambers
17 Elizabeth Garcia
17 Courtroom Deputy